IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2529 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A D WAGHELA

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No. 2529 of 1992

MR JF SHAH for Petitioner No. 1

MS REETA CHANDARANA, GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the order dated 16th March, 1992, passed by

the Gujarat Civil Services Tribunal. The petitioner has also challenged the charge-sheet dated 21st October, 1991, issued by the respondents.

2. The short facts leading to the present petition are that the petitioner, who was working as a Head Clerk, was considered by the Departmental Promotion Committee for his next promotion to the post of Office Superintendent in the year 1991. It is the case of the petitioner that the DPC which met on 2.3.1991 actually considered the case of the petitioner and having found him fit for promotion, also recommended his name for promotion. The petitioner has further stated that on 21st October, 1991, the respondent issued a charge-sheet to the petitioner, alleging his involvement in fabricating documents for the purpose of securing appointments to the post of drivers. The petitioner has stated that by order dated 4.11.1991, several persons were promoted to the post of Office Superintendent from the cadre of Head Clerk/Senior Assistant, but the petitioner was not given the promotion though his name was recommended by the DPC. The petitioner therefore, challenged the said action of the respondent before the Gujarat Civil Services Tribunal, by filing Appeal No. 438 of 1991. While disposing of the appeal, the Tribunal was pleased to reject the request of the petitioner for grant of promotion, but directed that the promotion of the respondent No.2 therein would be temporary and subject to the seniority of the petitioner, so that in case the petitioner is exonerated in the Departmental enquiry, he can be granted deemed date of promotion. The petitioner has challenged this order of the Appellate Tribunal in the present petition. Simultaneously, the petitioner has also challenged the charge-sheet dated 21st October, 1991, on various grounds.

3. Today, when the matter was called out, the learned AGP Ms. Reeta Chandarana has placed on record an order dated 1.1.2004, by which pursuant to the charge-sheet dated 21st October, 1991, a penalty of with-holding of Rs. 25/- from the monthly pension of the petitioner for a period of one year has been imposed. A copy of the said order is taken on record.

4. In view of this order of penalty, the petitioner's challenge to the charge-sheet has become infructuous. It will however be open for the petitioner to challenge the said order dated 1.1.2004, in accordance with law. The learned Counsel for the petitioner states that the said order of penalty dated 1.1.2004 was never supplied to him earlier and the petitioner having retired

with effect from 30.4.1998, may not be in a position to promptly challenge such an order. I am sure that if the petitioner simultaneously with filing of appeal against the said order of penalty, also seeks condonation of delay if any, making out sufficient grounds for the same, the authority will sympathetically consider the same in view of the fact that the petitioner has retired as far back as on 30.4.1998.

5. With respect to the petitioner's challenge to his non-promotion, I find that the Gujarat Civil Services Tribunal had followed the decision of the Hon'ble Supreme Court in the case of Union of India V. Jankiraman, reported in AIR 1991 SC 2010. The Tribunl also considered the relevant Service Rules in the decision of UOI Vs. Jankiraman (supra). The Hon'ble Supreme Court was pleased to come to the conclusion that seal cover procedure can be adopted in case of a Government servant only after charge-memo/charge-sheet is issued to him, and mere pendency of preliminary investigation prior to that stage is not sufficient to enable the authorities to adopt seal cover procedure.

6. In the present case, admittedly the respondents have not issued any charge-sheet to the petitioner when the DPC meeting had taken place and the case of the petitioner was recommended for promotion. The question however, is whether the petitioner can claim promotion as a matter of right when the charge-sheet is already issued before the panel can be operated and promotions can be issued to colleagues and juniors to the petitioner. In the decision of Delhi Development Authority Vs. H.C. Khurana, reported in AIR 1993 SC 1488, following the decision of the Hon'ble Supreme Court in the case of UOI Vs. Jankiraman (supra), it has been observed by the apex Court in paragraph 8 as under:-

> "8. These words clearly indicate that the sealed cover procedure was applicable, in cases where 'the disciplinary proceedings are pending' in respect of the Government servant, or 'a decision has been taken to initiate disciplinary proceedings'. Thus, on a decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a Government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a Government servant under such a cloud should not be promoted till he is cleared of the

allegations against him, into which an enquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the Government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against the public police and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

7. In the decision of the Hon'ble Supreme Court in UOI Vs. Jankiraman, the apex Court has made following observations:-

"..... A further guidelines contained in this Memorandum is that the same sealed cover procedure to be applied where a Government servant is recommended for promotion by the DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken."

8. From the above decisions, it is well settled that a Government servant cannot be denied consideration for promotion unless a Departmental charge-sheet has been issued against him or a charge-sheet in a criminal case has been filed in a criminal court. In case however, on

the date of the meeting of the DPC the above events have not taken place, that by itself would not enable the Government servant to claim promotion. If before the actual date of the promotion of his colleagues and juniors the Departmental charge-sheet has been issued or a charge-sheet has been filed in a criminal court against such a Government servant then in such a case, the Government servant cannot claim promotion merely on the basis of the recommendations by the DPC or on the basis of persons below him in the select list securing promotion. In that view of the matter, I find that the Gujarat Civil Services Tribunal was perfectly justified in not entertaining the request of the petitioner for promotion along with his colleagues and juniors, who were granted such promotion on 4.11.1991. It is also by now well settled that if ultimately the Government servant is not fully exonerated in the Departmental enquiry initiated against him due to which his promotion was with-held, the Government servant cannot claim promotion on the basis of the recommendation of the DPC, which may have been kept in abeyance. The challenge of the petitioner against the order of the Appellate Tribunal therefore, must fail. It will be open for the petitioner to revive his request for being granted promotion, if in case the petitioner finally succeeds in his challenge against the order of penalty dated 1.11.2004.

In the result, the petition fails and is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas